

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2338 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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LATHIA PAPER MANUFACTURING PVT.LTD.

Versus

GEB

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Appearance:

MR SUREN M SHAH for Petitioner

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CORAM : MR.JUSTICE R.K.ABICHANDANI and

MR.JUSTICE M.C.PATEL

Date of decision: 04/11/98

ORAL JUDGEMENT(Per:Abichandani.J)

The appellant company challenges the judgment and order dated 31.3.97 passed in Special Civil Suit No. 295 of 1991 before the second Jt. Civil Judge(SD), Mehsana dismissing the suit with no order as to costs.

2. According to the appellant, at the relevant time it was manufacturing paper and for the purpose of running its factory had obtained electricity connection from the respondent Board. The electricity line which was installed and the electricity meter which was fixed by the board used to be defective and the appellant had informed the respondent-Board about that fact. On 28.8.89 the appellant had informed the respondent that there was leakage of electricity in the meter box and therefore, necessary action should be taken. According to the appellant, the meter which was installed was defective and despite the complaint made by the appellant, the respondent did not make any attempt to find out the cause of leakage of electricity. The appellant had on 9.10.1989 requested the respondent to check the meter. On 7.11.1989, a new meter was installed but no testing report was furnished. According to the appellant, it was not informed about affixing of seals by the respondent Board on the said new meter. The grievance of the appellant was that it was not informed as to how many seals were affixed on the meter at the time when it was installed on 7.11.89 nor was it informed about its condition. Since, according to the appellant since the meter was not properly working, he wrote a letter dated 18.8.89 to the respondent Board complaining about the same. But till 18.12.90 the Board did not take any action. On 18.12.90 the meter was removed under a panchnama which according to the appellant was falsely drawn and an allegation was made that the seals of the meter were found tampered with. After the so called checking done on 18.12.90 respondent issued a bill of Rs. 1,64,376/- for consumption of 48275 units of electricity. That bill was challenged by the appellant before the Appellate Committee by depositing 30 percent of the amount demanded and the Appellate Authority after hearing the appellant ordered the bill to be revised to Rs. 11,11,704.43 p. and the amount of Rs. 49,313/- came to be adjusted against that revised bill. The disputed meter was tested and on 7.1.1991 it was certified "OK" and there was no defect in that meter. According to the appellant, the signature of the consumer which was taken on the panchnama was forcibly taken and his statements were recorded under duress and that they could not be taken into consideration against the appellant. On these allegations, the impugned bill was challenged and the appellant prayed for recovery of Rs. 49,313/- which was deposited towards the 30 percent of the original bill as a condition for approaching the Appellate Authority and it was later on adjusted towards the revised bill.

3. The respondent contested the suit by its written statement exh.16 denying the allegations made in the written statement and contended that when the Flying Squad of Gujarat Electricity Board at Mehsana visited the factory of the appellant on 18.12.90 for checking the electric installation it appeared that there was theft committed of electricity and therefore, electricity supply was disconnected and the meter was recovered under a panchnama for getting it tested. It had appeared at that time that seals of the meter were tampered with. Therefore, as per ABCD formula which is applied in such cases, bill for Rs. 1,64,3376/- was issued on the appellant. The appellant had voluntarily paid the amount of Rs. 49,313/- for getting the reconnection of the electricity supply and had executed a bond as per Rules on 7.1.91. The meter in question was found to be without any defect as per laboratory report dated 7.1.1991. The Appellate Committee had heard the appeal on 30.7.1991 and decision was taken in presence of the appellant's representative in which the amount of Rs. 52,671.94 p. was reduced and a revised bill for Rs. 1,11,704/-. 15 p. was issued. The board had given a registered notice on 19.9.91 to the appellant for the recovery of the amount due from the appellant.

4. The Trial Court after considering the evidence which was adduced in the suit came to a finding that the plaintiff failed to prove that the impugned bill was unjust or void. It was held that the defendant had established that the seals on the meter in question were tampered with by the plaintiff who had committed theft of electricity. It was also held that the plaintiff failed to establish that on 18.12.89, the defendant was informed that in spite of complaints, no action was taken by the defendant in respect of the faulty meter.

5. The learned counsel appearing for the appellant strongly contended that from the beginning the electric installation and the meter which were placed on the factory of the appellant were defective and that it was because the meter was defective that it showed higher consumption of electricity. It was argued that the appellant's business was seasonal and that there could not have been so much consumption of electricity in the months of January and February. According to the learned counsel the manufacture of paper was done by the appellant only between March and October and therefore, there could not have been consumption of as many as 48275 units of electricity by the appellant. It was further contended that the panchnama and the statement exhs. 68 and 69 did not reflect the true state of affairs and that

the panchnama was subsequently drawn and the statement was taken under duress. The learned counsel referred to the relevant evidence which was recorded by the trial court and submitted that on proper appreciation of evidence on record the appellant 's suit ought to have been decreed.

6. It clearly transpires from the evidence on record that on 18.12.90 when the Flying Squad of the respondent Board visited the appellant's factory and checked the electric installation, they noted that the seals of the meter were tampered with. Not only the panchnama records that fact, but, even in the statement which was recorded on 7.11.91, the director of the appellant company had admitted that the meter was recovered under a panchnama on 18.12.90 and sealed in his presence and that such sealed packet was intact when it was opened in his presence. In this statement also it was mentioned that four seals of the meter were found to be tampered with. At no point of time was it complained by the appellant that the statement was recorded under duress. The statement shows that the panchnama was validly drawn in the presence of the director of the appellant company Hirenkumar who gave his statement on 7.1.91. Therefore, the panchnama and the statement of the director of the appellant company clearly establish that four seals of the meter in question were found to be tampered with. The evidence also discloses that the appellant had executed a bond exh.53 in which it had undertaken to pay any amount that may be found due to be payable by the Appellate Authority. There is nothing on record to indicate that this bond was not voluntarily executed. The amount of Rs. 49,313/- was paid by the appellant as stated in this bond for approaching the Appellate Committee. The evidence establishes that the Appellate Committee had given proper hearing to the appellant and revised the bill as aforesaid. The Appellate Order was not challenged in the suit though of course the bill which was issued on the basis of the Appellate Order was challenged. According to the learned counsel for the appellant the Appellate Authority had made the order on 10.9.90.

7. On going through the relevant evidence pointed to us and the judgment of the trial court , we find ourselves in complete agreement with the reasoning adopted by the trial court for reaching its conclusion. The appeal is therefore summarily dismissed.

(M.C.Patel.J)